IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.7035-CAT of 2007
Date of Decision : May 11, 2007.

Sudarshan Kumar Mukerjee .... Petitioner

Vs.

Union of India and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR
HON'BLE MR.JUSTICE L.N.MITTAL

* * *

Present : Mr.Rohit Seth, Advocate
for the petitioner.

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J.S.KHEHAR, J. (Oral) :

We had invited the attention of the learned counsel for the petitioner, to the factual position noticed in paragraph 8 of the impugned order, passed by the Administrative Tribunal, dated 30.11.2006, while disposing of Original Application No.461-PB-2005. Learned counsel for the petitioner does not controvert the factual position noticed therein.

The only issue being agitated at the hands of the petitioner is, that an adverse inference ought to have been drawn against the respondents, on account of non-availability of the service record of the petitioner. In so far as the instant contention of the learned counsel for the petitioner is concerned, he seeks to place reliance on a decision, rendered by the Apex Court in ***M/s Sriram Industrial Enterprises Ltd. vs. Mahak***

Singh and Others reported as ***2007 (2) SCT 614***, wherein the Court, inter alia, observed as under :-

> ***"30.*** *The said approach, in our view, was erroneous in view of the decision of this Court in case of U.P.Drugs and Pharmaceuticals Company Ltd. (supra). The petitioner had wrongly described the documents relating to attendance for the years 1991 onwards as far as the respondents are concerned, as being irrelevant and the Tribunal has also accepted the said reasoning. Consequently, instead of drawing an adverse presumption for non-production of the said records, the Tribunal accepted the contention of the petitioner that the workmen had not worked for more than 240 days in the year preceding the date of their termination nor had the workmen filed any proof to show otherwise.*
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> ***31.*** *In our view, the High Court adopted the correct approach while deciding the controversy between the parties upon a correct understanding of the law as contained in Section 6 N read with Section 2 (g) of the U.P. Act which is applicable to these petitions.*
>
> ***32.*** *Having correctly interpreted the provisions of Section 6 N of the U.P. Act, the High Court rightly drew an adverse presumption for non-production of the Attendance Registers and the Muster Rolls for the years 1991 onwards. The best evidence having been withheld, the High Court was entitled to draw such adverse inference. The views expressed by this Court on the question of burden of proof in Range Forest Officer's case (supra) were watered down by the subsequent decision in R.M.Yellatty's case (supra) and in our view*

*the workmen had discharged their initial onus by production of the documents in their possession.***"**

It is not possible for us to draw any inference in favour of the petitioner, on the basis of the aforesaid observations made by the Apex Court. In fact, the issue in hand has been appropriately dealt with by the Tribunal, in paragraph 11 of its order, which is being extracted hereunder :-

"11. *Be that it may be, after thoughtful consideration of the matter as discussed herein above, this Court has reached to the conclusion that keeping in view the specific averment of the applicant that because of his illness, he has submitted applications for extension of leave on medical grounds along with medical certificates in proof, the onus also shifts on him, irrespective of the fact that the record is not traceable. Even at the time of filing of affidavit to that effect applicant has not supported it with these documents or copies thereof as he could have got the duplicate medical certificates from the concerned Hospital where he has under gone the treatment. He has also failed to assist the appellate authority by not showing any documentary evidence to treat this leave as EL or otherwise. It is highly improbable that the applicant who was working as Junior Engineer was not having any document in his possession to substantiate his case in this regard either before the authorities concerned or before this Court. Had it been the case of illiterate rustic person, the Court could have understood his pitiable condition not to maintain some record of leave or medical certificates. Therefore, the case law cited by the applicant is of no help to him as in the present case that stage is now over,*

keeping in view that while deciding his earlier OA no orders to draw adverse inference against the respondents have been passed by the Court. The facts of those cases are found to have no direct bearing on the facts of the present case. Otherwise also, it is for the leave sanctioning authority to see as to how leave of kind due is to be treated and Court can not interfere as to how this power is to be exercised by him. He has to act according to Leave Rules applicable to the employee. Thus, this Court finds no reason to interfere in these orders and it is held that there is no merit in the present case."

The petitioner being an educated person, holding the post of Junior Engineer, was expected to have some kind of information or record in his possession. He too could not assist the respondents in tracing out the record which was needed for the relief sought by the petitioner. In view of the above, we find no merit in the claim of the petitioner that an adverse inference ought to have been drawn against the respondents on account of non availability of the record.

Dismissed.

(J.S.KHEHAR)
JUDGE

May 11, 2007
monika

(L.N.MITTAL)
JUDGE